Hobart, Jamie

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Sent: Saturday, February 27, 2016 2:52 PM
To: pstestimony
Cc: Sen. Linares, Art; zRepresentative Jesse MacLachlan
Subject: Testimony related to H.B. No. 5408

To: The Committee on Public Safety and Security
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Ladies and Gentlemen,

I respectfully submit my testimony regarding HB-5408, "An Act Concerning The Presentation Of A Carry Permit".

I would like to state for the record that I am a permit holder for the purposes of carrying a weapon for all legal uses as allowed by current law.

To become a permit holder, there are a number of steps and expenses that one must go through to obtain such permit. Among those steps is to be investigated and found by numerous law enforcement agencies to be a suitable person, and to have no criminal record, to take and pass a eight hour training course and provide numerous fees and expenses to be approved for this **"Right"**.

This **"Right"**, which is something that the Constitutions of both the Federal and State governments recognize as a **"Right"**, and not a **"Privilege"** as is a Driver's license, is not "**Granted"** by government, but by the very existence every individual's **"Right"** to defend Self, Family, and Property.

I understand that government feels the need to regulate everything in the ideal of **"Public Safety"**, but there is one thing that government always forgets; that **"Public Safety"** is just an **"Ideal"**, and not a **"Right"**.

Drivers are expected to show their license when stopped for a violation of the law, as they have committed a violation of the law, or a suspicion of committing a crime which may be determined by the arresting officer during the stop.
People driving lawfully and exhibiting no crime have no reason to be stopped or asked for their Papers of Identification, regardless of what the officer might want to demand, unless he can articulate a reasonable suspicion of a crime.

The following are examples with links to the full case decision for a number of these stops:

Click on the case titles to link to the full case decision.

Terry v. Ohio,392 US 1(1968)-An officer can briefly detain a person, based upon reasonable suspicion of criminal activity, long enough to dispel the suspicion or to allow it to rise to the level of probable cause for an arrest. The officer is also permitted to do a limited "frisk" search of the person without a warrant. Before the officer can frisk search the subject, he must:

1. Have articulable facts that the person could be armed with a weapon.

2. Limit the search to pat searching the outer garments of the suspect to feel for objects that might be weapons.

3. Only reach inside the clothing after feeling such objects.

Adams v. Williams, 407 U.S. 143 (1972)-A known reliable informant's information that the driver in a vehicle is carrying a gun is sufficient to stop and frisk the driver.

US v. Brignoni-Ponce, 422 U. S. 873 (1975)-Reasonable suspicion of criminal activity warrants a temporary seizure for the purpose of questioning limited to the purpose of the stop.

Brown v. Texas, 443 US 47, (1979)-Texas had a statute making it a criminal act for a person to refuse to give his name and address to an officer upon his request. The application of the Texas statute to detain appellant and require him to identify himself violated the Fourth Amendment because the officers lacked any reasonable suspicion to believe that appellant was engaged or had engaged in criminal conduct. Detaining appellant to require him to identify himself constituted a seizure of his person subject to the requirement of the Fourth Amendment that the seizure be "reasonable."

US v. Mendenhall, 446 US 544 (1980)-The court provided the following examples to demonstrate when a person is "seized" for Fourth Amendment purposes, but not actually secured by the officer:

- The threatening presence of several officers.
- The display of a weapon by an officer.
- Some physical touching of the person of the citizen.
- The use of language or tone of voice indicating that compliance with the officer's request might be compelled.

Florida v. Royer, 460 US 491(1983)-An investigative detention must be conducted in a manner that is no more intrusive than necessary to establish or dispel the officer's suspicions.

Kolender v. Lawson, 461 U.S. 352 (1983)-A California statute requires persons loitering or wandering the streets to identify themselves with "credible and reliable" identification when requested by a peace officer. The Supreme Court held that the statute was, "unconstitutionally vague on its face because it encourages arbitrary enforcement by failing to describe with sufficient particularity what a suspect must do in order to satisfy the statute."

Michigan v. Long, 463 U.S. 1032 (1983)-An officer may conduct a Terry type search of a vehicle's interior if there is reasonable suspicion that there is a weapon readily accessible in it.

Florida v. Rodriguez, 469 U.S. 1 (1984)-When the police contacted Rodriguez in an airport and asked him to step over to another public area to talk. It was a consensual encounter and, therefore, was not a "seizure."

US v. Hensley, 469 U.S. 221 (1985)-When police locate a suspect of a past crime, they can stop and ask the person questions and check identification based on reasonable suspicion. Officers can rely on a "wanted flyer" issued on reasonable suspicion to stop a person.

Florida v. Bostick, 501 US 429 (1991)-The standard for determining a "seizure" is not if a person feels free to leave, but whether the person feels free to decline the requests of the officer.

Gallegos v. City of Colorado Springs 114 F.3d 1024 (1997)(10th Cir. Court)-A police officer can take precautionary measures to restrain a person during a "Terry" stop. In this case, the officer had reasonable suspicion to detain Gallegos. Gallegos refused to stop for the officer. The officer grabbed him. He pulled away and kept walking. This occurred a couple of times until Gallegos turned and took a fighting stance. Gallegos was taken to the ground with an arm bar.

Florida v. J.L., 529 US 266 (2000)-An anonymous tip that a person is carrying a concealed weapon is not in and of itself enough to stop and frisk the person.

Illinois v. Wardlow, 528 US 119 (2000)-The unprovoked flight of a person, upon seeing the police, in a high crime area, gives the officer reasonable suspicion to chase and detain him.

US v. Neff, 300 F.3d 1217 (10th Cir. 2002)-... a *Terry* stop does not become unreasonable just because police officers use handcuffs on a subject or place him on the ground. *See Perdue,* 8 F.3d at 1463. Further, the "use of guns in connection with a stop is permissible where the police reasonably believe the weapons are necessary for their protection." "Since police officers should not be required to take unnecessary risks in performing their duties, they are `authorized to take such steps as [are] reasonably necessary to protect their personal safety and to maintain the status quo during the course of [a *Terry*] stop.'" *Id.* (quoting *United States v. Hensley,* 469 U.S. 221, 235, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985)).

Hiibel v. Sixth Judicial Dist. Court of Nevada, 542 U.S. 177 (2004)-A police officer can require a person to identify himself/herself if the officer has reasonable suspicion that the person has committed, is committing, or is about to commit a crime.

US v. Humphries, 372 F.3d 653 (4th Cir. 2004)-"While the odor of marijuana provides probable cause to believe that marijuana is present, the presence of marijuana does not of itself authorize the police either to search any place or to arrest any person in the vicinity. Additional factors must be present to localize the presence of marijuana such that its placement will justify either the search or the arrest." The officers followed Humphries some distance and consistently smelled the odor of marijuana coming from him. Since the smell of marijuana could be localized to him, the officer had probable cause to stop and arrest him. The arrest led to the discovery and drugs and a gun on his person.

US v. Williams, 403 F. 3d 1188 (10th Cir. 2005)-Even were we to assume that the tip was truly "anonymous" like the one in *J.L.*, this case is distinguishable from *J.L.* As indicated above, the police in *J.L.* relied exclusively on an anonymous tip to search the defendant. Here, the police officers seized Williams and searched him only after his own conduct gave them reasonable suspicion to believe he was possibly armed and dangerous. When the officers first approached the table where Williams was sitting, they simply informed Williams and his associates that there had been a report of a firearm and asked to search each individual for weapons. The officers did eventually seize Williams, but only after they observed him behaving suspiciously, fidgeting in his seat and keeping his hands in his pockets despite repeated requests to place them on the table, thereby giving rise to a reasonable suspicion that he had a weapon in his pocket. The district court therefore properly denied Williams' motion to suppress the firearm.

US v. Paulette, 05-5549 (6th Cir. 2006)-Held: Officers had reasonable suspicion to detain Paulette for the following reasons:

1. He was engaged in criminal activity based upon his hand movements consistent with drug-dealing activity,

2. His efforts to evade the police upon noticing them, and

3. His presence in a high crime area.

The court also said that the officers were allowed to search the defendant for weapons because of the frequency in which drug dealers carry weapons.

Arizona V. Johnson, 000 US 07-1122 (2009)-A vehicle was lawfully stopped on traffic for a violation. During the course of the traffic stop, one of the officers on the scene talked to the passenger, Johnson. The encounter was consensual and was not related to any criminal matter. The officer developed reasonable suspicion that Johnson may be armed and pat searched him. A gun was found and he was arrested. The Court determined that an officer's inquiries into matters unrelated to the justification for the traffic stop do not convert the encounter into something other than a lawful seizure, so long as the inquiries do not measurably extend the stop's duration. In a traffic-stop setting, the first Terry condition—a lawful investigatory stop—is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity. To justify a pat down of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

US v. Aquino, 11-1372 (8th Cir. 2012)-Aquino was contacted on a bus by police. The officer asked him for consent to search his person. Aquino refused. The officer asked him to pull his clothes tight to his body. Aquino obeyed the officer. The officer saw a bulge under Aquino's pants by the calf. The officer immediately placed Aquino in handcuffs and pulled his lower pant leg up to reveal a bag of methamphetamine taped to the leg. The Court held that seeing the bulge in and of itself does not establish probable cause to conduct a search beyond a pat search of the outer clothing, which the officer did not do. The evidence was excluded.

US v. Jones, No. 09-6549, (6th Cir. 2012)-An officer saw the defendant conduct a possible drug sale. He stopped the defendant and ultimately arrested him. The defendant was convicted. He appealed claiming the officer did not have reasonable suspicion to stop him. The Court held the following was sufficient to establish reasonable suspicion to detain the defendant:

1. The defendant was in a high-crime area, particularly known for drug activity;

2. The officer observed Defendant and another man engaged in an apparent hand-to-hand transaction;

3. The defendant ran when the officer exited his car;

4. As the defendant was fleeing he threw several items to the ground.

US v. Black, No. 11-5084 (4th Cir. 2013)-This case deals with Terry stops and searches of individuals based on reasonable suspicion. The case also involves open carry of a firearm. The Court made it very clear that it will not tolerate officers' misuse of innocent facts as indicators of suspicious activity to detain and/or search people. The Court further said just because an officer has reasonable suspicion that an individual in a group may be engaged in criminal activity, that reasonable suspicion, without further indicators, does not apply to the others in the group. The Court further stated, "The Government attempts to meet its Terry burden by patching together a set of innocent, suspicion-free facts, which cannot rationally be relied on to establish reasonable suspicion." There are several key points in this case that the Court made that I recommend reading.

Keep in mind that innocent facts used when considering the totality of the circumstances can help establish reasonable suspicion. This case, however, deals with the misuse of these innocent facts.

US v. Arnott, 13-1881 (1Cir. 2014)-The frisk was lawful because Arnott was stopped for possibly being involved in a recent drug deal. He was highly nervous and the connection between guns and drugs is legendary.

US v. Hayden, 13-2291 (8th Cir. 2014)-When a police officer identifies himself by saying, "Police" to someone on the street, it is not a seizure under the Fourth Amendment.

The officers received notice that there has been a rash of robberies and burglaries in a high crime area. Officers saw Hayden and his partner casing a house at night in the area. They identified themselves by saying, "Police". Hayden turned away and put his hand in his pocket. The officer ordered him to remove his hand. He did so. The officer frisked him and found a gun. Hayden was arrested. It was a lawful search and arrest.

Now the State of Connecticut has decided, after losing a case in the BOARD OF FIREARMS PERMIT EXAMINERS hearing, that they must have more control over gun owners. That is the only reason we are even discussing this bill. The State of Connecticut lost a case which they were hoping they would win to make an example of gun owners. A gun owner was stopped and asked for his permit. The law, did not at that time require a permit holder to show his or her permit, only to carry it. There was an arrest. And the gun owner was released and the charges dropped, because what he did was to lawfully carry a weapon where he was lawfully permitted to. Two officers felt they were either more aware of the law than the gun owner, or were just trying to exert their control over the gun owner and placed him under arrest. He filed for a hearing and won his case. The state appealed, because they want control over gun owners, again, this is about control, not the law, because they were wrong about the law, which is why the state lost the case on the appeal as well.

To further get satisfaction, the state now wants to re-write the law to either correct the mistakes they made back in 1988 when they wrote it, or to further push Governor Malloy's agenda on gun control, or both. But in doing so, the state is once again violating the rights of legally permitted gun owners and in doing so by making it a law that requires a gun owner to show his or her permit, creates a second class group of citizens, those who are already vetted and background

checked and found to be upstanding citizens, but who out of all the citizens in the state, can be detained without any other reason that the officer "Might have seen or though he or she, saw a gun". Now, every time a gun owner is seen in the store shopping while legally carrying their permitted weapon, they will continue to be subjected to "Swatting" by members of the public that do not like that they exercise their legal rights to carry a weapon. If you don't think that happens, ask Senator's Blumenthal, Murphy, Larson, and Rep Esty why they have written a letter to the grocery association requesting that they deny gun owners their rights by disallowing carrying of weapons in their stores? Remember this from the list above? Florida v. J.L., 529 US 266 (2000)-An anonymous tip that a person is carrying a concealed weapon is not in and of itself enough to stop and frisk the person.

This is what legally permitted gun owners are up against. They have committed no crime and are proceeding in a legal and lawful manner, and someone who is **"Afraid"** can call in and make sure that they are given a hard time. We are not second class citizens. We are first class citizens! The Federal government has declared that anyone making disparaging remarks against **"Muslims"** can and will be charged with a hate crime. I have a friend who is a Muslim, and a permitted gun owner. What happens then? When does the discrimination of gun owners stop?

Please consider voting no to the changes incorporated in this bill. Please understand that gun owners are not the criminal element that police should be detaining, and not the cold blooded killers that the anti-gun groups want to portray us to be. We are fathers, mothers, brothers and sisters. Uncles and aunts grandparents and great grand-parents, and we are permitted gun owners because we have already proven ourselves.

Please excuse the length of this letter, but there is much to consider in this seemingly tiny bill.

Arthur D. Mazeau